apart from merger, why that agreement cannot stand. Section 12 of the Dealings in Land (Occupation Period) Ordinance, 1949 provides that any dealing by an enemy subject purporting to have been effected after the 12th August, 1945 shall be void. The definition of "dealing" in section 2 of the same Ordinance is as follows :—

"Dealing means a transaction of whatever nature by which land is effected."

I am of opinion that the "transaction" in this case included the whole process of passing of the title to the land in question from the vendor to the final purchaser including the preliminary negotiations therefor, the written agreement and the conveyance. No doubt the agreement, standing by itself, comes within the definition of a "dealing" and there might be circumstances in which a transaction between parties was no more than and was not intended to be more than an agreement for the sale of land effecting a transfer of the equitable interest. That, however, was not the transaction in the present case, and I do not think it permissible to split a transaction into its constitutent parts so as to arrive at the conclusion that one part of it is valid and thus to evade the provisions of the Ordinance. I think the substance of the whole transaction must be looked at. and if was a transaction which was finally effectuated after the 12th August, 1945 then the whole transaction is void by reason of the provisions of section 12.

It was argued on behalf of the appellant that the point regarding merger of the agreement in the conveyance was not open to the respondents on the pleadings. I do not think that there is any substance in this point. Merger is a matter of law and no new facts had to be pleaded to support the proposition that the contract merged in the conveyance. The respondents have in the Statement of Claim specifically pleaded in paragraph 13 that the conveyance was null and void under the provisions of the Dealings in Land (Occupation Period) Ordinance, 1949. If the failure of the respondents specifically to mention merger in their Reply in fact took the appellant by surprise then the objection should have been taken at the trial. The point was clearly raised in the Court below, although apparently not until the very end of the arguments. Had objection been taken at that time the learned judge would no doubt have dealt with the position either by adjournment or by allowing further argument by the respondent on the point or in such manner as he thought fit. As it is, however, the point was raised in the Court below without objection and is specifically mentioned by the learned judge in his judgment. In my opinion, therefore, the point was clearly open to the respondent on this appeal.

I would, therefore, dismiss the appeal with costs.

*Appeal dismissed.*

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## SOH CHYE SOON v. BULAT BIN ABU BAKAR & ANOR.

**[Court of Appeal (Mathew, C.J., Pretheroe and Briggs, JJ.) May 4, 1952]**

**[Kota Bharu — Civil Appeal No. 69 of 1951]**

*Limitation Enactment — Kelantan Limitation Enactment, No. 4 of 1930 — Applicability of.*

The facts in this case as found by the learned trial Judge are that the plaintiffs (respondents) bought the piece of land, which was the subject matter of this appeal, about 25 years ago for $60 from one Soh Kee Phian. The appellant attempted unsuccessfully to show that the learned trial Judge was wrong in his findings of fact. The question of limitation was not pleaded and was not argued on the appeal. The only question the Court had to determine was the Kelantan Limitation Enactment, No. 4 of 1930 which came into force on 1st April 1930 should be applied in this case.

**Held**, that the Limitation Enactment can and should be applied in this case.

*Case referred to :—*

(1) *The Ydun* (1899) P. 236 at 246.

COURT OF APPEAL.

*S. A. Lingam* for the appellant.

The arguments appear sufficiently from the judgment of Mathew, C.J.

*Cur. Adv. Vult.*

**Mathew, C.J.** :— The appellant (defendant in the proceedings before the High Court in Kelantan Civil Suit No. 89/51) appeals against the decision of the learned trial Judge that she as Administratrix of the Estate of Soh Kee Piaw alias Soh Kee Phian (deceased) should transfer Lot No. 47 Mukim Jal Daerah Jal Besar in the district of Tumpat, to the names of the respondents-plaintiffs.

The facts of the case as found by the learned trial judge are that the plaintiffs bought this piece of land about 25 years ago for $60 from one Soh Kee Phian. The appellant attempted unsuccessfully to show that the learned trial judge was wrong in his findings of fact. The question of limitation was not pleaded and was not argued on the appeal. The only question we have to determine is whether the Kelantan Limitation

Enactment No. 4 of 1930, which came into force on the 1st April, 1930, should be applied in this case.

Sections 3 and 12 of the Kelantan Limitation Enactment read :—

"3 (i). Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted after the period of limitation prescribed therefor by the Schedule hereto shall be dismissed.

(ii). The provisions of sub-section (i) shall not apply to any such suit if the defendant in his written statement of defence or verbally at the hearing of the suit shall have notified the Court that he does not desire to avail himself of the defence of limitation."

"12. In computing any period of limitation prescribed by this Enactment the time during which the defendant shall have been absent out of Kelantan shall be excluded from such computation, except any time during which service of a summons to appear and answer in the suit can, during the absence of such defendant, be made in any mode prescribed by law."

Item 92 of the Schedule is as follows :—

| | | |
|---|---|---|
| "92. For specific performance of a contract | 3 years | The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused." |

The first question for decision is whether this Enactment can be applied to the present case the cause of action in which arose before 1930. It is clear from *Rustomji's Law of Limitation* (5th edition), at page 15, that :—

"A Statute of Limitation being a law of procedure is as a rule retrospective in its operation and governs all proceedings from the moment of its enactment."

In the case of *The Ydun*[1], the following passage appears in the judgment of Vaughan Williams, L.J. :—

"I also agree that the Act is retrospective, for though, no doubt, the general rule of construction is that "nova constitutio futuris formam imponere debet non praeteritis," it is pointed out in **Moon v. Durden** (2 Ex. 22) that that rule of construction yields to a sufficiently expressed intention of the Legislature that the enactment shall have a retrospective operation, and there is abundant authority that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts."

I am satisfied that the Limitation Enactment can and should be applied in this case.

The next question to consider is whether the period of limitation of three years has run against the respondents. The first plaintiff in his evidence says :—

"About 2 years after I bought the land Soh Kee Piaw went away and I do not know where he went. I have not seen him since."

The Moratorium Proclamation was repealed with effect from the 1st October, 1949. This suit was instituted on the 16th of October, 1951, more than two years after the repeal. It is certain, therefore, that the statutory period of limitation had expired before the suit was instituted.

I would, therefore, allow this appeal with costs. The amount deposited in Court by the appellant should be paid out to her.

**Pretheroe, J.** : —I have had the advantage of reading the judgment prepared by the learned President in this appeal. I agree with that judgment and have nothing to add thereto.

**Briggs, J.** : —I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and have nothing to add.

*Appeal allowed.*

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## CHEAH KENG KOOI v. A. W. L. FRUGTNIET.

[Orig. Civ. Juris. (Wilson, J.) May 5, 1952]

[K.L. — Originating Summons No. 72 of 1951]

*Debtor and Creditor (Occupation Period) Ordinance, 1948 — Demand — Extended period as mutually agreed.*

Defendant borrowed $10,000 from F.M.S. Benefit Society repayable on 12th December, 1941. By letter dated 13th July, 1943 he was requested to settle outstanding interest at his earliest convenience and submit proposals with regard to repayment of loan. He was unable to pay anything at the time and said so. The whole amount of the principal and interest due was repaid on the 22nd April, 1944.

**Held**, there was a demand for repayment of principal, and the repayment was made within an extended period as mutually agreed upon by the parties.

*Cases referred to* :—

(1) *Khoo Soo Jin & Anor. v. Lye Yew Song* (1951) M.L.J. 231.

(2) *Chua Yam Quee v. Peena Moona Mohamed Abdul Hameed & Anor.* (1950) M.L.J. 141.

ORIGINATING SUMMONS.

*Tan Teow Bok* for the plaintiff.

*E. A. S. Wagner* for the defendant.

*Cur. Adv. Vult.*

**Wilson, J.** : —The defendant borrowed $10,000 from the F.M.S. Benefit Society on a memorandum of charge on No. 227, Ampang Road, Kuala Lumpur. He promised to repay this sum on the 12th December, 1941 and of course undertook to pay interest until full settlement of the loan. He did not repay the principal on the due date and fell into arrears with the interest. On the 13th July, 1943 the Secretaries and Treasurers of the Society wrote to the defendant as follows :—

"With reference to the loan granted to you by the above Society, we give you below particulars of the principal and interest outstanding as at 30th June, 2603.